Supreme Court of the United States

October Term, 1926

NO [redacted] 211

T. H. SMALLWOOD, W. P. SMALLWOOD, A. D. SMALLWOOD, et al., etc.,

Petitioners,

—vs.—

JUAN G. GALLARDO, Treasurer of Porto Rico.

NO [redacted] 212

ADOLFO VALDES ORDONEZ, SALVADOR GARCIA, VICTOR OCHOA, et al., etc.,

Petitioners,

—vs.—

JUAN G. GALLARDO, Treasurer of Porto Rico.

NO [redacted] 213

INSULAR MOTOR CORPORATION,

Petitioner,

—vs.—

JUAN G. GALLARDO, Treasurer of Porto Rico.

SUPPLEMENTAL BRIEF FOR PETITIONERS.

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VI.

These cases are not affected by a prohibition, created after their determination below, against restraining the collection of taxes.

Section 7 of the Act of March 4, 1927 (Public No. 797), amends section 48 of the Jones Act so as to include the following:

> That no suit for the purpose of restraining the assessment or collection of any tax imposed by the laws of Porto Rico shall be maintained in the District Court of the United States for Porto Rico.

Since petitioners' original brief was printed information has been received of a contention by respondent in other cases that the clause quoted above rendered moot all pending tax injunction suits which arose in the District Court for Porto Rico. The reason assigned is that the new enactment is retroactive. There is no warrant for that interpretation.

(1) Phraseology identical in form or substance has been explicitly held inapplicable to actions already instituted.

> *Moon vs. Durden*, 2 Exch. (W. H. & G.) 22;
>
> *Knight vs. Lee*, 1893, 1 Q. B. 41;
>
> *Burbank vs. Inhabitants of Auburn*, 31 Me. 590;
>
> *Gumpper vs. Waterbury Traction Co.*, 68 Conn. 124;
>
> *New Carlisle Bank vs. Brown*, 5 Ohio C. D. 94.

The provision as to suits in the statutes involved was in the English cases that they should not be "brought or maintained" and in the other cases, should not be "maintained." It was said that one meaning of *maintain* is *commence or bring* and that it was solely in this sense that the word is used in a statute like that now being considered.

See also:

> *Smith vs. Lyon*, 14 Conn. 175;

Bruenn vs. North Yakima School Dist., No. 7, 101 Wash. 374.

(2) In a long line of decisions this Court has uniformly ruled that only prospective effect will be given to a statute unless the contrary is required by express language or by plain implication. A few recent illustrations will suffice:

U. S. Fidelity Co. vs. Struthers Wells Co., 209 U. S. 306, 314;
Un. Pac. R. R. vs. Laramie Stock Yards, 231 U. S. 190, 199;
Cameron vs. United States, 231 U. S. 710, 720;
Shwab vs. Doyle, 258 U. S. 529, 534-7;
Fullerton Co. vs. Northern Pacific, 266 U. S. 435, 437;
United States vs. St. Louis, etc., Ry. Co., 270 U. S. 1, 3.

Here neither in terms nor by inference is there the slightest indication of a legislative intent to have the amendment operate retrospectively.

Dated, March 29, 1927.

FRANCIS G. CAFFEY,
Solicitor for Petitioners.